

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1924.**

Oscar Thornton, Shabie Thornton,  
Inman Thornton, Wesley McDonald,  
Waverly McDonald and Tinker Car-  
roll,

Petitioners.

vs.

United States of America,

Respondent.

No. ....

Dear Sirs:

Please take notice that upon the annexed petition and brief of and on behalf of the above named petitioners, and a certified copy of the transcript of the record in this cause, including the proceedings in the United States Circuit Court of Appeals for the Fifth Circuit, submitted herewith, an application will be made to the Supreme Court of the United States, to be held at the Capitol, Washington, D. C., on Monday, the 16th day of February, 1925, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, for a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Fifth Circuit, to review the judgment of said Court made and entered in the above entitled cause on the 5th day of November, 1924, to the end that the said judgment may be set aside, reversed

and annulled, and that such further proceedings in said cause may be had as to justice shall appertain.

Dated at Valdosta, Georgia, this January 17th, 1925.

E. K. WILCOX,  
OMER W. FRANKLIN,  
Attorneys and Counsel  
for Petitioners.

E. K. WILCOX,  
OMER W. FRANKLIN,  
HARLEY LANGDALE,  
JOHN W. BENNETT,  
L. W. BRANCH,  
RUSSELL SNOW,  
Of Counsel.

IN THE  
**SUPREME COURT OF THE UNITED STATES.**  
**OCTOBER TERM, 1924.**

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 Inman Thornton, Wesley McDonald,  
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No.-----

**PETITION FOR WRIT OF CERTIORARI  
 TO THE UNITED STATES CIRCUIT COURT OF AP-  
 PEALS FOR THE FIFTH CIRCUIT.**

To the **Honorable Supreme Court of the United States:**

The petition of Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, respectfully shows:

I.

**NATURE OF CASE.**

Petitioners, together with sixteen others, were indicted by the grand jurors in and for the Southwestern Division of the Southern District of Georgia for conspiracy to commit an offense against the United States, the offense charged briefly stated being the use of deadly and dangerous weapons for the purpose of deterring and preventing ten named employees of the Bureau of Animal Industry of the United

States Department of Agriculture from discharging their duties as such employes of said Bureau of Animal Industry, which said employees were charged with the duty of supervising the dipping of and causing to be dipped cattle to prevent the spread of splenetic fever among cattle, and in order to eradicate and remove from tick infested cattle what is commonly known as the cattle fever tick, all in Echols County, Georgia. There were a number of overt acts charged against the other defendants, such as the dynamiting of dipping vats and the burning of dipping pens and personal encounters with certain of the employees of the Bureau of Animal Industry, but the overt act charged against the six defendants who are herein petitioners was that they used deadly and dangerous weapons in shooting at, towards and in the direction of the employees of the Bureau of Animal Industry, aforesaid. The six defendants who appear herein as petitioners were convicted; none of the other defendants were convicted.

The State of Georgia, through its agents, had been endeavoring to carry on the work of tick eradication under the State law in Echols County for several years, and a majority of the overt acts charged in the indictment were those committed prior to the entry upon the scene of action of the employes of the Bureau of Animal Industry.

Ten of the employees of the Bureau of Animal Industry, armed with repeating rifles and automatic pistols, were introduced into Echols County under an agreement between the State Veterinarian and the Chief of the Bureau of Animal Industry of the Department of Agriculture and were placed in a camp in Echols County and immediately undertook and carried on the detail work of tick eradication, as provided for by the law of the State of Georgia, such as serving notices on cattle owners that they must appear at certain dipping vats and dip their cattle on certain days, riding the range and gathering up cattle that had not been dipped and dipping them and holding them until the owners paid the expense of dipping, attending the dipping vats on dipping days heavily armed, and doing all of the work which, under the State law, the agents of the State Veterinarian

had been performing and were charged with the duty of performing. The six defendants, who are herein petitioners, passed by Camp McKinnon on a certain Sunday afternoon and fired a pistol in the direction of the camp and made certain threats, and later on returned and fired again and were met by a volley from the machine guns, automatic rifles and pistols, but no one was injured in the melee. Echols County was quarantined territory under the orders of the Bureau of Animal Industry of the Department of Agriculture and is a border county, bordering on the State of Florida. The border counties in Florida are likewise quarantined territory under the orders of the Bureau of Animal Industry, and, as far as the evidence developed, have not undertaken the eradication of the cattle tick. The work being done in Echols County was purely domestic in its character, there being no suggestion that any of the cattle were being offered for interstate commerce or were intended for interstate commerce, and there being no allegation in the indictment or suggestion in the evidence that there was any purpose on the part of the state authorities or the Bureau of Animal Industry to prevent the spread of splenic fever among cattle from Georgia to Florida, the conditions in Florida with reference to the cattle tick not being shown by any evidence.

The petitioners were convicted and a writ of error was sued out to the Circuit Court of Appeals for the Fifth Circuit.

## II.

### ACTION IN THE CIRCUIT COURT OF APPEALS

On appeal, the Circuit Court of Appeals for the Fifth Circuit affirmed the verdict and sentence of the District Court, holding, among other things, that "the County of Echols, in which the employees of the Bureau of Animal Industry were alleged to be engaged, is bounded on the south by a county in the State of Florida. The supervision of cattle complained of had a direct tendency to prevent the spread of diseases into another state. This act of supervision was

so closely connected with interstate commerce as to authorize the Government to supervise the dipping of domestic cattle."

### III.

#### QUESTIONS OF GENERAL IMPORTANCE INVOLVED.

The offense charged in the indictment is defined in An Act to Enable the Secretary of Agriculture to Establish and Maintain Quarantine Districts, etc., approved March 3, 1905, § 5; Criminal Code § 62; U. S. Comp. Stat. § 10230, and the duties of the employees of the Bureau of Animal Industry are defined and limited by the terms of An Act for the Establishment of a Bureau of Animal Industry, approved May 29, 1884, 23 Stat. § 32; U. S. Comp. Stat. § 8691.

The questions involved and which were raised by demurrer to the indictment and in other ways during the trial of the case are:

First. Were the employees of the Bureau of Animal Industry of the Department of Agriculture of the United States legally charged with the duty of supervising the dipping of and were they legally engaged in the causing to be dipped cattle in Echols County, Georgia, and does the Act of May 29, 1884, 23 Stat. § 32; U. S. Comp. Stat. § 8691, authorize them as such employees to camp in Echols County, Georgia, and, heavily armed, cause the citizens of Georgia by notices served on them and by other machinery of the Georgia law to bring their cattle to certain dipping vats and dip them, and to seize and sequester and dip cattle that have not been so dipped and hold the same until dipping charges are paid, there being no allegation in the indictment and no evidence to show that the work being done was anything more than the routine work of enforcing the laws of Georgia with reference to the destruction of cattle ticks, and there being nothing to show that interstate commerce was even remotely concerned in the alleged duties being performed by the employees of the Bureau of Animal Industry?

Second. If the Act for the Establishment of a Bureau of

Animal Industry, approved May 29th, 1884, 23 Stat. § 32, U. S. Comp. Stat. § 8691, does vest in the Secretary of Agriculture and through him in the Bureau of Animal Industry and in its employees the right to arm themselves, to camp in the midst of a Georgia county, to serve dipping notices under the Georgia law, to attend the dipping vats and cause the citizens to dip their cattle, to seize and sequester and hold cattle not dipped, all under the provisions of the Georgia law, and this simply as a part of the general state work of disinfecting cattle, and not remotely connected in any way with interstate commerce, the second question of importance raised, and to be considered, is whether or not the above quoted Act of Congress is constitutional in that said Act and especially section three thereof so construed attempts to give to the Secretary of Agriculture the authority to take such steps as may be necessary to prevent the spread of contagious diseases among cattle from one state or territory to another, regardless of whether or not the cattle have become the subjects of interstate commerce, and vests in the Secretary of Agriculture rights and powers and duties which were reserved to the states and to the State of Georgia, and were not delegated, as aforesaid, to the United States or the Congress thereof, or to any of the officers who derive their authority and exercise their offices and perform their duties under and by virtue of any law passed by the Congress of the United States, the compulsory dipping of domestic cattle in Georgia, under a state law, which has as its purpose the eradication from domestic cattle of the cattle tick being purely a matter within the jurisdiction of the General Assembly of the State of Georgia, and the exercise of a power which was reserved to the state upon the adoption of the Constitution and which was never delegated to Congress by the State of Georgia.

Third. Was the indictment a valid indictment if it failed to allege the acceptance by the State of Georgia of rules and regulations for the suppression of contagious diseases among cattle, prepared by the Secretary of Agriculture, and if it failed to allege that plans and methods for the suppression and extirpation of said diseases adopted by the State

of Georgia had been accepted by the Secretary of Agriculture, these being conditions precedent under the Act for the Establishment of a Bureau of Animal Industry, approved May 29, 1884, above referred to, in the exercise of the powers vested in the Secretary of Agriculture by said Act?

Fourth. Was not the indictment defective in that it nowhere alleges that the cattle being dipped were the subject matter of interstate commerce, or that said cattle had in any way under the law become subject to the supervision or control or power of the Secretary of Agriculture?

These questions are of general importance throughout the country and have been in recent years and will continue to arise as long as active steps are being taken by the various states to eradicate contagious, infectious and communicable diseases from cattle, and it is of great importance and gravity that the rights and powers of the Bureau of Animal Industry should be clearly defined in order that unauthorized acts on the part of the employees of the Bureau of Animal Industry will not arouse animosity and hostility to the Federal authorities and create irritation over what the public may generally regard as acts of usurpation and an excess of authority.

The questions are of great gravity and importance because the opinion of the Circuit Court of Appeals for the Fifth Circuit is to the effect that simply because a county borders upon another state, the Federal Government has the right to undertake compulsory tick eradication from cattle regardless of the question of interstate commerce and regardless of whether or not the border counties in the adjacent state are themselves engaged in the work of tick eradication or are free from tick infestation. The Circuit Court of Appeals for the Fifth Circuit in its opinion took judicial cognizance of the fact that Echols County was a border county and it could likewise have taken judicial cognizance of the fact that the northern part of Florida has not entered upon the work of tick eradication at all and is quarantined territory because of tick infestation therein.

The questions involved are of great gravity and importance because they are Constitutional questions and ques-

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tions involving the construction of statutes of the United States.

#### IV.

#### **RECORD IN THE COURT OF APPEALS.**

Petitioners file herewith a certified transcript of the record and proceedings in the Circuit Court of Appeals for the Fifth Circuit, as required by the rules.

#### V.

#### **NOTICE OF APPLICATION.**

Due notice of this application has been given to the District Attorney of the United States for the Southern District of Georgia, as appears by the acknowledgment of service hereto attached.

WHEREFORE, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the said United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record in said cause, and of all proceedings in said Circuit Court of Appeals, which were entitled in that cause, to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioners may have such other or further relief or remedy in the premises as to this Court may seem appropriate and that said final judgment of said Circuit Court of Appeals be reversed, and set aside, and such other proceedings in the cause be had as to justice shall appertain.

And petitioners will ever pray, etc.

Dated this 17th day of January, 1925.

E. K. WILCOX,  
OMER W. FRANKLIN,  
Attorneys and Counsel  
for Petitioners.

E. K. WILCOX,  
OMER W. FRANKLIN,  
HARLEY LANGDALE,  
JOHN W. BENNETT,  
L. W. BRANCH,  
RUSSELL SNOW,  
Of Counsel.

STATE OF GEORGIA }  
County of Lowndes } ss.:

E. K. Wilcox, being duly sworn, says: That he is one of counsel for Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, petitioners herein; that he prepared the foregoing petition and that the allegations thereof are true, as he verily believes.

E. K. WILCOX.

Sworn to and subscribed before  
me, this 20th day of January, 1925.

NINA CONNELL,

Notary Public, Lowndes County, Georgia.

My commission expires Dec. 19th, 1927.

[SEAL]

**To the District Attorney of the United States, for the Southern District of Georgia:**

You are hereby notified that on Monday, the 16th day of February, 1925, the undersigned will cause to be submitted to the Honorable The Supreme Court of the United States a petition for a writ of certiorari, requiring the Circuit Court of Appeals for the Fifth Circuit to certify to said Supreme Court for its review and determination the cause in said Circuit Court of Appeals entitled Oscar Thornton, Shabie Thornton, Inman Thornton, Wesley McDonald, Waverly McDonald and Tinker Carroll, plaintiffs in error, vs.

United States of America, defendant in error, No. 4413,  
October term, 1924.

E. K. WILCOX,  
OMER W. FRANKLIN,  
Attorneys and Counsel  
for Petitioners.

E. K. WILCOX,  
OMER W. FRANKLIN,  
HARLEY LANGDALE,  
JOHN W. BENNETT,  
L. W. BRANCH,  
RUSSELL SNOW,  
Of Counsel.

Service of the foregoing petition for certiorari and brief  
in support thereof and notice that the same will be submit-  
ted on the 16th day of February, 1925, hereby acknowledged.  
Copies received. All other and further notice and service  
hereby waived.

This                      day of February, 1925.

United States Attorney.

Asst. United States Attorney.